

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:CTM:LN:POSTF-162595-01
Shwang

date: DEC 19 2001

to: [REDACTED], Team Manager, LMSB: [REDACTED]
Attn: [REDACTED], Team Coordinator, LMSB: [REDACTED]

from: Sandy Hwang, Attorney
Joyce M. Marr, Senior Attorney
June Y. Bass, Associate Area Counsel (LMSB)

subject: [REDACTED] (E.I.N. [REDACTED]) and Subsidiary
Waiver of Statute of Limitation for the Consolidated Group under
Treas. Reg. § 1.1502-77

Statute Expires December 31, [REDACTED]

DISCLOSURE STATEMENT

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

This is in response to your request for advice received on November 16, 2001. *This memorandum should not be cited as precedent.*

ISSUE

Who is the proper party to sign the Form 872 for the taxable year ended [REDACTED] for [REDACTED] and Subsidiary?

CONCLUSION

When [REDACTED] Inc. (formerly known as [REDACTED], Inc. and formerly a subsidiary of [REDACTED], Inc.) merged with [REDACTED], Inc., it succeeded to the several liability of [REDACTED], Inc. for the consolidated tax liability of the [REDACTED], Inc. consolidated group for the taxable year ended [REDACTED]. Thus, [REDACTED], Inc. is the proper party to sign the Form 872 for the taxable year ended [REDACTED]

On [REDACTED], [REDACTED] acquired all the outstanding shares of the Taxpayer's stock for cash in a taxable purchase. On [REDACTED], the Taxpayer was merged into [REDACTED] in a downstream merger and [REDACTED] was the surviving entity after the merger.² The next day, in a transaction that qualified under I.R.C. § 368(a)(1)(F) as a Type F reorganization, [REDACTED] changed its name to [REDACTED], Inc. ("[REDACTED]") and changed its state of incorporation from [REDACTED] to Delaware. [REDACTED] continues to use [REDACTED]'s employer identification number [REDACTED]. Subsequently, [REDACTED] was acquired by [REDACTED] in a stock purchase.

Exam states that it can get an extension from [REDACTED], [REDACTED], and/or [REDACTED] but does not know which entity should sign the consent to extend or waive the statute of limitations for assessment on behalf of the Taxpayer.

Analysis

In general, the common parent is the sole agent for each member of the group for all matters relating to the income tax liability for the consolidated return year. Treas. Reg. § 1.1502-77. Moreover, the common parent is generally the proper party to sign consents and receive all correspondence. Treas. Reg. § 1.1502-77(a). However, each member of the group is severally liable for the entire tax of the group. Treas. Reg. § 1.1502-6(a).

In this case, [REDACTED], the common parent of [REDACTED], Inc. and Subsidiary, is no longer in existence. Additionally, since [REDACTED] merged into [REDACTED], its only subsidiary, the consolidated group is no longer in existence.

When state law so provides, the successor in interest is primarily liable for the debts and obligations of the absorbed corporation. Phillips v. Lyman H. Howe Films Co., 33 F.2d 891, 892 (3d Cir. 1929). The party that is liable for the debts of the merged corporation is the one that must sign the waiver of the statute of limitations on behalf of the merged corporation. See Gott v. Live Poultry Transit Co., 17 Del. Ch. 288, 152 Atl. 801 (1931). When state law provides for primary liability of a surviving corporation after a statutory merger, the surviving corporation should sign the consent to extend the statute of

² Exam has not been able to obtain details of the merger nor has this office through public records.

limitations as "Surviving Corporation, successor in interest to predecessor corporation." Primary Liability and Transferee Liability of Successor Corporation, G.C.M. 34,970, I-4092 (July 31, 1972).

The Office of Chief Counsel has found that every state, with which it has dealt, has a statute making the successor corporation in a merger liable for all debts and liabilities of the disappearing corporation. Furthermore, it believes that even if there existed a state that did not have such a statute, the state common law would impose such liability on the successor in a merger. Thus, [REDACTED], formerly [REDACTED], succeeded to the several liability of [REDACTED] for the consolidated tax liability of [REDACTED] consolidated group for the taxable year ended [REDACTED]. Accordingly, [REDACTED] is the proper party to sign the Form 872 for the consolidated tax liability of Holdings consolidated group for the year at issue.

The caption of the Form 872 should read as follows:

[REDACTED], Inc. (E.I.N.: [REDACTED])
[REDACTED], formerly [REDACTED], Inc. (a Delaware corporation), successor to [REDACTED] Inc. (a [REDACTED] corporation), successor to [REDACTED], Inc. (E.I.N.: [REDACTED]) *

We recommend that at the bottom of page the following language be set forth including the asterisk: *This is with respect to the consolidated tax liability of [REDACTED], Inc. (E.I.N.: [REDACTED]) and Subsidiary consolidated return group for the taxable year ended [REDACTED].

In addition, the signature block on page 2 of the Form 872 should be signed as follows:

[REDACTED], Inc., formerly [REDACTED]
[REDACTED], Inc. (a Delaware corporation), successor to [REDACTED] Inc. (a [REDACTED] corporation), successor to [REDACTED], Inc.*

The block should be signed by a current officer of [REDACTED].

Additionally, since the requirements of I.R.C. § 6501(c)(4)(B), pertaining to giving the taxpayer notification of certain rights, must be satisfied, please ensure that the statute extension is requested by the most recent revision of Form Letter 907 or 976.

This memorandum was pre-reviewed by our National Office pursuant to the NSAR procedures. If you have any questions, contact attorney Sandy Hwang at (949)360-3432.